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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

JENNIFER HARRISON, an Individual,
LESA ANTONE, an Individual,
RUSSELL JAFFE, an Individual, AND
JEREMY BRONAUGH, an Individual,

Plaintiff,

vs.

KATIE HOBBS, an Individual,
Defendant.

CASE NO. CV2018-006623

**RESPONSE TO PLAINTIFFS'
MOTION TO REQUEST
EVIDENTIARY HEARING**

(Honorable Pamela Gates)

Defendant Katie Hobbs filed a motion to dismiss Plaintiffs' Complaint. Plaintiffs, in a response of sorts, filed a "Motion to Request Evidentiary Hearing," in which they request a hearing "for the purpose of presenting evidence to the Court of Ms. Hobbs' defamation, present witnesses to support the claim, and to question the defendant as to the veracity of her claims in the motion to dismiss." Plaintiffs then proceed to attack the arguments in the Motion to Dismiss in light of what they purport the evidence will show.

Plaintiffs' request is procedurally improper. A motion to dismiss challenges the legal sufficiency of the complaint, and a ruling on such a motion must assume the truth of the well-pleaded allegations in the complaint to the extent such allegations are provable. *See Mohave Disposal v. City of Kingman*, 186 Ariz. 343, 346 (1996) (noting that courts "assume the truth of the allegations set forth in the complaint" and that dismissal is proper "only if the plaintiffs would not be entitled to relief under any facts susceptible of

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1 proof in the statement of the claim”); *Logan v. Forever Living Prods. Int’l, Inc.*, 203
2 Ariz. 191, 192 (2002) (internal quotation marks omitted). Opinions, of course, are not
3 provable. And “[i]f matters outside the pleading are considered, the motion must be
4 treated as one for summary judgment.” *Coleman v. City of Mesa*, 230 Ariz. 352, 356 ¶9
5 (2012).

6 Here, of course, Defendant Hobbs has not introduced matters outside the pleading,
7 nor does she at this stage seek summary judgment, much less trial or an evidentiary
8 hearing. Consideration of evidence is improper at this stage—the Court must instead
9 focus on the allegations in the complaint that are susceptible to proof; most of them are
10 not.

11 Defendant Hobbs is not opposed to the Court hearing oral argument on her Motion
12 to Dismiss. But she is opposed to Plaintiffs’ attempt to hold a trial on the merits of their
13 claim, which are far premature at this stage in the proceedings.

14 RESPECTFULLY SUBMITTED this 26th day of November, 2018.

15 BALLARD SPAHR LLP

16 By: /s/ Daniel A. Arellano

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21 Attorneys for Defendant
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CERTIFICATE OF SERVICE

I certify that on this 26th day of November, 2018, I electronically transmitted a PDF version of this document to the Office of the Clerk of the Superior Court, Maricopa County, for filing using the AZTurboCourt System.

A complete copy of the foregoing sent via email this same date to the following:

Jennifer Harrison

[REDACTED]

Plaintiff

Lesa Antone

[REDACTED]

Plaintiff

Jeremy Bronaugh

[REDACTED]

Plaintiff

Russell Jaffe

[REDACTED]

Plaintiff

/s/ Christina M. Revering